

The
Electoral
Commission

Inquiry into Disqualification of Membership from the National Assembly for Wales

Evidence of the Electoral Commission

Introduction

1.1 The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate political party and election finance and set standards for well-run elections. We put voters first by working to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

1.2 We welcome the opportunity to give evidence to the Committee's Inquiry. Relevant to the Inquiry is that:

- We have recently completed a UK-wide consultation on many aspects of standing for election, including candidate disqualifications. We will publish our report in June 2014.
- We publish guidance to candidates on standing for election. Our suite of guidance for candidates standing for election to the National Assembly for Wales is available on our website :<http://www.electoralcommission.org.uk/i-am-a/candidate-or-agent/national-assembly-for-wales-elections>

1.3 It is widely accepted that electoral law has many problems. It is voluminous, fragmented and inconsistent across different elections. It is also in many places unnecessarily complex and in need of modernisation. The different pieces of electoral law need simplifying, updating and consolidating.

1.4 The three UK Law Commissions (England and Wales, Scotland, Northern Ireland) are currently reviewing the law governing electoral administration in the UK. The Law Commissions expect to publish a consultation paper late in 2014, which will set out recommendations and options for reform. The Law Commissions plan to finalise their recommendations in summer 2015 before publishing a final report and Bill in early 2017. The intention is for changes in law to be enacted and in force in time for the UK Parliamentary general election in 2020. The Law Commissions' review includes the legislation on standing for election in the UK, including in elections to the National Assembly for Wales.

1.5 In our view, the rules on standing for election should aim to promote the following principles:

- The rules should as far as possible facilitate participation in the electoral process. There should be no unnecessary barriers for candidates participating in elections.
- The rules should be clear, straightforward and unambiguous so that candidates, agents, political parties and those administering the electoral process understand the rules and can see that they are being followed;

- Fair treatment should be ensured as far as possible between candidates standing for election, save where differences are genuinely justified;
- The rules should be as consistent as possible across different types of elections in the interests of promoting participation.
- The rules should be up to date, reflecting current technology and expectations of candidates, agents, political parties and those administering elections.

Principles underpinning disqualifications

1.6 Disqualifications, imposed for whatever reason, act as a limit on the freedom of individuals to participate in elections, therefore the rationale for any disqualification criteria should be justified and proportionate. They should also be clearly specified and explained and – as far as possible, reflecting the devolution of policy responsibility for different elections within the UK – apply consistently, so that people can understand easily whether or not they can stand for any election in the UK.

1.7 Justified and proportionate disqualification criteria should allow the widest possible choice of candidates for electors to choose from, striking a balance between preventing candidacy in limited, specified circumstances, while not unreasonably discouraging participation.

1.8 The disqualification criteria for elections to the National Assembly for Wales are currently applied by the relevant election rules both at the time of nomination and at the point of election: they do not distinguish between employment or office holders who would be disqualified from *standing as candidates* in elections and those who would be disqualified from *holding office* if elected. Drawing a clearer distinction between the two sets of disqualification criteria, and setting out the rationale for each set, could help ensure that the overall approach is justified and proportionate and based on sound principles.

1.9 We consider that there are at least two key principles that should underpin legislation on disqualifications:

- First, the Assembly may decide that there are certain officeholders or employees whose involvement as candidates in an election could compromise or undermine the integrity or impartiality of the election process.
- Second, the Assembly may decide that there are certain offices or employed positions which are incompatible with membership of the Assembly, because the effective or impartial discharge of either function

could be compromised or undermined by the appearance of a conflict of interest.

1.10 While it should continue to be for the Assembly and the Secretary of State to determine which positions should be specified in each category, the Committee should consider how best to ensure that the Order and relevant election rules make clear the distinction between the two categories.

Practical considerations on when disqualifications take effect

1.11 In determining which positions should be specified in each category, there are important practical issues to consider. Differentiation between times when disqualifications take effect could create confusion for candidates standing for election, whereas the rules should be clear, straightforward and unambiguous.

1.12 If certain disqualifications were to apply at the time of election and not at nomination, there remains the issue of notice periods. A conflict of interest would continue to apply while there was a contract of employment in place and a notice period being served. To address this issue, an elected candidate could be required to resign from the relevant post or office the first working day after the election in order to take up membership of the Assembly. (That is the position for the disqualification for officers and employees of the local authority in local government elections in Scotland and it may be worth considering how this operates¹.)

1.13 Because of the issue of notice periods, applying certain disqualifications at the time of election and not at nomination might be workable only where notice can be given with immediate effect. That might mean in practice disqualification on election might not be workable for employees. As mentioned below, it would be advisable to consult organisations proposed to be listed in the Order about the workability of any such proposals, including how organisations would confirm in principle that immediate notice could be given, and that it was given when required in the case of a particular individual affected.

Core set of disqualifications

1.14 When considering the issue of when disqualifications take effect, it should be recalled that some people who hold specified offices are currently disqualified from being a member of the National Assembly for Wales, in a similar way as they would be in respect of the UK Parliament, the Scottish Parliament, Northern Ireland Assembly and European Parliament². In all of these cases, the disqualifications will continue to apply at the time of nomination and election. Where resignation from employment or office is necessary, candidates must have given and served their period of notice by the time of nomination.

¹ Section 31A Local Government (Scotland) Act 1973.

² Section 16 Government of Wales Act 2006

1.15 The list includes people who are: a judge; a civil servant; a member of the armed forces; a member of a police force; a member of a legislature of any country or territory outside the Commonwealth (other than Ireland); or are the subject of a bankruptcy restrictions order. A person would also be incapable of being elected or holding elective office if they have been convicted or reported guilty by an election court of a corrupt or illegal practice.

List of bodies in the Disqualification Order

1.16 The list of bodies in the Assembly's Disqualification Orders, like legislation that applies to other legislatures, is amended for each election to include offices from newly-established or re-named bodies and to delete bodies that no longer exist. The fact that the list regularly changes presents challenges for candidates and political parties.

1.17 Our published and revised advice to candidates³ tells them that the full range of disqualifications is complex and if they are in any doubt about whether they are disqualified, to do everything they can to check that they are not disqualified before submitting their nomination papers. We advise candidates that they must be sure that they are not disqualified as they must state in their consent to nomination that to the best of their knowledge and belief they are not disqualified for membership of the Assembly. It is a criminal offence to make a false statement on nomination papers as to qualification for being elected, so we advise candidates that if they are in any doubt, they should contact their employer, consult the legislation or, if necessary, take their own independent legal advice. Election Returning Officers are not able to confirm whether or not candidates are disqualified.

1.18 We do not have sufficient knowledge about the specific bodies listed in the Assembly's Disqualification Order to reach views about which particular disqualifying posts and employments should be included. However, **in our view the two principles we set out above should be applied to decide whether any disqualification is justified and proportionate, either at the point of nomination or on taking up the office of Assembly member.** Inclusion in the list must be clearly justifiable since it is a restriction on participation in elections.

1.19 It may be appropriate to consult the bodies proposed to be listed before the Assembly makes a new order, if that is not already done, so that they could give their views on matters that affect their employees' or representatives' ability to stand for election. The bodies concerned might have a useful contribution to make as to whether there could be any conflict of interest. In other cases it may be that the Welsh Government or the Assembly considers it inappropriate for someone

³ Recently updated example for local elections in Wales and England
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0007/141784/Part-1-Can-you-stand-for-election-LGEW.pdf

employed by a certain body to be an Assembly member because, for example, they make the appointments or fund the body. In such cases consultation may not be necessary.

Other matters: timescale for making the Disqualification Order

1.20 The Commission always recommends that governments ensure that legislation on the conduct of elections is in place at least six months before the election is held. However, in our view, the Disqualifications Order should be in force at least six months before nominations open. The reasons for this are below.

1.21 The timescale for making the Disqualifications Order is particularly important because, as explained earlier, candidates standing for election may need to resign their employment and to have completed their notice period to avoid being disqualified from standing for election. Making the Order in good time should also ensure that political parties have enough time properly to check their candidates' eligibility to stand for election well before nominations open.

1.22 It is also important for the Assembly to inform those who need to know that the Order has been made and what changes it contains. The changes in the Order need to be communicated to political parties; to the bodies who are listed in the Order so that they can inform their employees or representatives and to the Electoral Commission so that we can incorporate any new provisions on disqualification in our published guidance for candidates standing for election

1.23 Our published guidance is disseminated to candidates through political parties and by Returning Officers in candidates' information packs and pre-election briefings, as well as being available on our website. We routinely publish our guidance for candidates on standing in December ahead of an election being held the following May.

1.24 We recommend that the Assembly's Disqualification Order is made at least six months before nominations open and the contents of the Order clearly communicated to bodies listed in the Order, political parties, and the Electoral Commission.

The Electoral Commission

April 2014